(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

October Term, 1995

DENNIS LEROY HALLGRIMSON,

Petitioner,

v.

PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

Petition For Writ Of Certiorari To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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34 pp

QUESTIONS PRESENTED FOR REVIEW

1. WHETHER THE TRIAL COURT ERRED IN NOT FOLLOWING THE UNITED STATES SUPREME COURT CASES OF TERRY V. OHIO (1968) 392 US 1, AND MINNESOTA V. DICKERSON (1993) 508 US ___, 124 L. ED. 2D 334?

LIST OF PARTIES TO THE PROCEEDING IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the Court of Appeal of the State of California, Second Appellate District, and the California Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

DENNIS LEROY HALLGRIMSON, the Petitioner herein, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeal of the State of California, Second Appellate District, entered in the above-entitled case on January 8, 1996, and Petition For Review was denied by the California Supreme Court on March 13, 1996.

OPINIONS BELOW

The minute order of the Honorable WILLIAM HOLLINGSWORTH, Judge of the Superior Court of Los Angeles County, California, denying the Motion For Suppression pursuant to California Penal Code Section 1538.5 is reprinted in the Appendix.

The opinion of the Court of Appeals, whose judgment is herein sought to be reviewed is an unpublished opinion dated January 8, 1996, in the Court of Appeal of the State of California Second Appellate District Case No. B091816, and is reprinted in the Appendix. The Denial of the Petition For Review in the California Supreme Court on March 13, 1996 is reprinted in the Appendix.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on January 8, 1996, and the denial of the Petition For Review by the California Supreme Court was on March

13, 1996. The jurisdiction of this Court is invoked pursuant to 28 USC Section 1257(a).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS INVOLVED

Fourth Amendment to United States Constitution which provides:

"The right of the people to be secure in the persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fourteenth Amendment to United States Constitution which provides: " . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws . . . "

STATEMENT OF THE CASE

This is an appeal from the Guilty Plea entered on November 2, 1994 as the result of the denial of Petitioner's Motion To Suppress Evidence pursuant to Penal Code Section 1538.5.

On May 19, 1994, a preliminary examination was held in Division 3 of the Municipal Court of Inglewood

Judicial District of Los Angeles County, California, before the Honorable Judge WARDELL G. MOSS. At the conclusion of said hearing, Petitioner was held to answer. (Clerk's Transcript "hereafter referred to as "CT" 1, 36)

On or about June 2, 1994, an Information was filed in the Superior Court of Los Angeles County charging Appellant, on March 29, 1994, with violation of Health and Safety Code Sections: 11351 POSSESSION FOR SALE OF A CONTROLLED SUBSTANCE (COCAINE) in Count 1; 11370.1(a) POSSESSION OF A CONTROLLED SUBSTANCE WITH FIREARM in Count 2; POSSESSION FOR SALE OF A CONTROLLED SUBSTANCE (COCAINE) in Count 3; 11378 POSSESSION FOR SALE OF A CONTROLLED SUBSTANCE (METHAMPHETAMINE) in Count 4; 11350(a) POSSESSION OF A CONTROLLED SUBSTANCE (COCAINE) in Count 5. (CT 38-42)

On or about July 8, 1994, Petitioner filed his Notice of Motion and Motion To Suppress Evidence pursuant to Penal Code Section 1538.5 along with Points And Authorities. (CT 46-53)

On November 2, 1994, the Petitioner's Suppression Motion was heard by the Honorable Judge WILLIAM HOLLINGSWORTH in Department SW "C" of the Los Angeles County Superior Court. (Reporter's Transcript hereinafter referred to as "RT" 1-42) The Honorable WILLIAM HOLLINGSWORTH denied the Appellant's Suppression Motion. (RT 42)

On November 2, 1994, after the Court denied his Motion To Suppress, Petitioner pled guilty to Count 4 of the Information. (RT 56)

On November 17, 1994, Petitioner filed his Notice of Appeal. (CT 66-67)

On January 8, 1996, the Court of Appeal affirmed the judgment of the Superior Court. (Appendix)

On February 2, 1996, Petitioner filed his Petition For Review with the California Supreme Court.

On March 13, 1996, the California Supreme Court denied his Petition For Review.

STATEMENT OF FACTS

On March 29, 1994, Hawthorne police officers served a search warrant on the location of 12712 South Eucalyptus, Hawthorne, California, and the search warrant commanded the Hawthorne police officers to search the aforementioned residence, along with LARRY LEE ADAMS, and a vehicle described as a 1992 Pontiac Transam, License No. 1FGE122. (RT 5, 17-18)

The Hawthorne police officers entered said residence and found Petitioner and LARRY LEE ADAMS inside. Hawthorne police officers handcuffed Petitioner, and then searched him. (RT 18-19) Hawthorne police officer JAMES ROYER then felt a cylinder in the jacket of Petitioner, but thought it was not a weapon. (RT 19) Officer ROYER found controlled substances on Petitioner's person. (RT 19-20) Subsequently, the Hawthorne police officers searched, without a warrant, the residence of Petitioner and found additional contraband. (RT 21-22)

ARGUMENT

I

THE TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION TO SUPPRESS EVIDENCE BECAUSE PETITIONER WAS A MERE "VISITOR" AT THE LOCATION WHERE THE SEARCH WARRANT WAS EXECUTED, AND THE POLICE OFFICER THOUGHT THAT THE CYLINDER THAT HE FELT IN PETITIONER'S JACKET WAS *NOT* A WEAPON.

At the Motion To Suppress Evidence hearing, Petitioner's counsel asked Hawthorne police officer JAMES ROYER the following questions with the included responses:

> "Q. AND THIS SEARCH WARRANT DID NOT COMMAND YOU TO SEARCH MR. HALLGRIMSON?
>
> A. NO, HE WAS NOT NAMED IN THE WARRANT.
>
> Q. AND YOU HAD NEVER SEEN MR. HALLGRIMSON BEFORE THIS DATE?
>
> A. NO, SIR, I HAD NOT.
>
> Q. AND WHEN YOU CAME TO THIS LOCATION AND YOU CAME INTO THE ROOM, MR. HALLGRIMSON AND MR. ADAMS WERE WATCHING TELEVISION?
>
> A. PRIOR TO MY ENTRY INTO THE HOUSE, I DON'T HAVE AN –
>
> Q. WAS THE TELEVISION SET ON?
>
> A. I DON'T RECALL.
>
> Q. AND YOU PLACED MR. HALLGRIMSON UNDER ARREST AT THAT TIME?

A. NO, I DID NOT.

Q. WELL, DID YOU COMMAND HIM TO LAY ON THE FLOOR?

A. YES, I DID.

Q. WAS HE UNDER ARREST AT THAT TIME.

A. NO.

Q. WAS HE JUST IN CUSTODY?

A. NO.

Q. WELL, WHO WOULD YOU – WHAT WOULD YOU CHARACTERIZE HIS LEGAL POSITION AT THAT TIME?

A. HE WAS MERELY BEING DETAINED FOR MY SAFETY AND THE SAFETY OF MY TEAM MEMBERS.

Q. OKAY. AND YOU HAD NO PRIOR INFORMATION THAT MR. HALLGRIMSON HAD ANY WEAPONS ON HIM PRIOR TO THAT TIME, DID YOU, WHEN YOU WENT INTO THAT HOUSE?

A. NO, SIR.

Q. OKAY, AND AFTER YOU HANDCUFFED HIM, YOU THEN HELPED HIM UP?

A. YES, SIR.

Q. BUT HIS HANDS WERE HANDCUFFED BEHIND HIM AT THAT POINT, RIGHT?

A. YES.

Q. AND YOU WERE CONCERNED ABOUT YOUR SAFETY AT THAT POINT AS IT RELATES TO MR. HALLGRIMSON?

A. YES, SIR." (RT 18-19)

It is respectfully submitted that the police officers should never have been allowed to detain and search the Petitioner as he was a "mere visitor" to the residence.

In the case of *People v. Gallant*, 225 Cal. App 3d 200, 208 (1990) the court stated that "The law does not permit a person to be detained unless the police have articulable facts making it objectively reasonable to suspect that particular person of criminal activity. From the facts that drugs in a saleable quantity have been found in a house, police may reasonably assume that some people come to that house to either deliver or buy drugs. However, a police officer may not reasonably conclude from that same fact that everyone approaching that house is involved in the drug trade. In the absence of evidence of their particular involvement in the illegal activity, friends, family, and the Fuller Brush man should be free to knock on the door without being ordered inside at gunpoint and frisked . . . " The Court went on to state, at page 210, that:

"Thus, while the police are free to question a visitor, such as defendant, to ascertain his connection to the premises, they cannot detain him to do so unless they have specific articulable facts indicating such a connection. The mere hunch that he might be an occupant of the house which they are searching, or a policy to search everyone who approaches, is not such a specific fact . . . "

It is quite obvious, in this case, that the police officers did not have specific articulable facts to support their actions in detaining Petitioner. In fact, Petitioner's counsel, on cross-examination, elicited from the searching

police officer that Petitioner was a "visitor" in the following statements:

> "Q. NOW, DID YOU DETERMINE THAT MR. HALLGRIMSON WAS A VISITOR AT THIS RESIDENCE?
>
> A. I BELIEVE HE MADE STATEMENTS TO ME THAT HE DIDN'T LIVE THERE, YES.
>
> Q. OKAY. AND DID MR. ADAMS, ALSO?
>
> A. YES.
>
> Q. OKAY, YOU FOUND NO INDICIA OF OWNERSHIP, OR ANYTHING SHOWING THAT MR. HALLGRIMSON RESIDED IN THAT HOUSE?
>
> A. NO, THERE WAS NO INDICATION THAT HE LIVED THERE.
>
> Q. AND YOU HAD NO ONE, AS FAR AS YOU KNEW, THAT OBSERVED HIM GOING IN AND OUT OF THAT LOCATION; HAD YOU?
>
> A. NO." (RT 20-21)

IT IS IMPORTANT TO NOTE HERE THAT BY THE POLICE OFFICER'S OWN TESTIMONY, THE PETITIONER WAS CLEARLY A VISITOR TO THE RESIDENCE!

In the case of *People v. Berry*, 224 Cal. App. 3d 162, 169 (1990) the Court stated that "if the circumstances apparent to the searching officers show indicia of only a casual, temporary presence at the place being searched, the person is a "mere visitor" whose property cannot be searched solely because it happens to be located on premises named in the warrant . . . "

THE POLICE OFFICERS DID NOT ATTEMPT TO DETERMINE WHY THE PETITIONER WAS AT THE RESIDENCE AT THE TIME OF THE EXERCISE OF THE SEARCH WARRANT. THE POLICE OFFICERS DID NOT GIVE ANY ARTICULABLE FACTS FOR DETAINING AND THEN SEARCHING DEFENDANT, OTHER THAN TO SAY THAT IT WAS FOR THEIR OWN SAFETY. THE "SAFETY" ARGUMENT IS A BUZZWORD FOR UNAUTHORIZED SEARCH IN THIS CASE. The Petitioner was handcuffed, with his hands behind him, by the police officers, and therefore could not be a threat to the police officers at that time. Further, police officer JAMES ROYER stated on cross-examination at the Suppression Hearing the following:

"Q. NOW, YOU SAID YOU SEARCHED HIM AT THAT POINT FOR WEAPONS?

IS THAT CORRECT?

A. YES, SIR.

Q. BUT HIS HANDS WERE HANDCUFFED BEHIND HIM AT THAT POINT, RIGHT?

A. YES.

Q. AND YOU WERE CONCERNED ABOUT YOUR SAFETY AT THAT POINT AS IT RELATES TO MR. HALLGRIMSON?

A. YES, SIR.

Q. NOW, WHEN YOU FELT THE OBJECT – YOU SAID YOU FELT A CYLINDER – BUT IT DIDN'T FEEL LIKE A WEAPON; DID IT?

A. NO.

Q. NOW, AFTER YOU FELT THE CYLINDER YOU REACHED IN THE POCKET AND TOOK

OUT WHAT WAS IN THE POCKET; IS THAT CORRECT?

A. I REACHED IN, TRYING TO RETRIEVE THAT – THAT OBJECT THAT I FELT.

Q. AND AT THE POINT THAT YOU SEARCHED MR. HALLGRIMSON, YOU NEITHER HAD HIS CONSENT, NOR A SEARCH WARRANT?

A. NO, SIR." (RT 19-20)

In the United States Supreme Court case of *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979) the Supreme Court held that a search warrant authorizing a search of a tavern did not authorize a personal search of the patrons present when the warrant was executed, irrespective of their relationship to the premises or the suspected criminal activity. The Court noted the Fourth Amendment protects persons wherever they happened to be, and mere presence at the tavern, without more, did not supply the probable cause needed to search the patrons.

In the California Supreme Court case of *People v. Collins*, 1 Cal. 3d 658, 662, (1970) the Court stated that: "Feeling a soft object in a suspect's pocket during a pat-down, absent unusual circumstances, does not warrant an officer's intrusion into a suspect's pocket to retrieve the object. A pat-down must "be confined in scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer."

MORE IMPORTANTLY, THE TRIAL COURT CLEARLY VIOLATED THE EDICT OF THE UNITED STATES SUPREME COURT CASES OF *TERRY V. OHIO*,

392 US 1 (1968), AND *MINNESOTA V. DICKERSON*, 508 US___, 124 L.ED 2D 334 (1993). In *Terry*, the Court stated that "when an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, (the officer may conduct a patdown search) to determine whether the person is in fact carrying a weapon . . . The purpose of this limited search is not to discover evidence of crime, but to all the officer to pursue his investigation without fear of violence." 392 US 24

In *Minnesota v. Dickerson*, the Court held that "Where an officer who is executing a valid search for one item seizes a different item, this Court rightly has been sensitive to the danger . . . that officers will enlarge a specific authorization into the equivalent of a general warrant to rummage and seize at will . . . Here, the officer's continued exploration of respondent's pocket after having concluded that it contained no weapon was unrelated to the sole justification of the search (under Terry) . . . the protection of the police officer and others nearby."124 L.ED 2d 347

Next, the Court of Appeals, in the case of *People v. Dickey*, 21 Cal. App. 4th 952, 957 (1994) stated that a soft object may not be retrieved by a police officer when its incriminating character was not immediately apparent.

IT IS RESPECTFULLY SUBMITTED THAT THE POLICE OFFICER AND THE COURT OF APPEAL *MISSED THE POINT* THAT, AS SOON AS THE POLICE OFFICER FELT THE CYLINDER AND THOUGHT IT DIDN'T FEEL LIKE A WEAPON, HE SHOULD NOT

HAVE RETRIEVED THE CYLINDER, AS HE THEN WAS *NOT* CONCERNED FOR HIS SAFETY, BUT WAS CONCERNED ABOUT *COMPLETING AN ILLEGAL SEARCH*! THESE UNLAWFUL ACTIONS OF THE HAWTHORNE POLICE DEPARTMENT ARE NOT IN DISPUTE, BUT THE LEGAL EFFECT IS SURELY IN DISPUTE!

The recent case of *People v. Glaser*, DAR 13816, October 12, 1995, is distinguishable from this case. Under *Glaser*, the Court held that officers' initial detention of defendant was justified by the need to (a) determine defendant's identity, (b) and connection to the premises (c) and to protect the officers' own safety. IN THIS CASE, THE POLICE OFFICERS (A) *NEVER* ATTEMPTED TO DETERMINE DEFENDANT'S IDENTITY BEFORE THE SEARCH, (B) NEVER ATTEMPTED TO DETERMINE DEFENDANT'S CONNECTION TO THE PREMISES BEFORE THE SEARCH (OTHER THAN TO DETERMINE THAT HE WAS A "VISITOR" TO THE PREMISES), (C) AND AFTER THEY HANDCUFFED THE PETITIONER AND FELT A CYLINDER, THAT THE OFFICER KNEW WAS *NOT* A WEAPON, EFFECTED HIS SEARCH TO FIND DRUGS.

II

THE TRIAL COURT ERRED IN DENYING PETITIONER'S MOTION TO SUPPRESS EVIDENCE BECAUSE THE PETITIONER DID NOT CONSENT TO THE SEARCH OF HIS RESIDENCE, AND THE SEARCH AND RECOVERY OF CONTRABAND AT HIS RESIDENCE WAS THE FRUIT OF AN ILLEGAL SEARCH.

In this case, the Petitioner respectfully submits that all the controlled substances found belonging to the Petitioner should be suppressed as the fruits of an illegal search. This based upon the cases of *People v. Haydel,* 12 Cal. 3d 190 (1974) and *Wong Sun,* 371 U.S. 471 (1963).

The question of whether consent from all of the circumstances, including, without limitation, the individual's knowledge of his or her right to refuse consent. The Fourth and Fourteenth Amendments require that a consent to search not be coerced, by explicit means, by implied threat or covert force. In examining the surrounding circumstances to determine if consent is coerced, the Court must take into account the subtly coercive police questions, as well as the possibly vulnerable subjective state of the person who consents. *Schneckloth v. Bustamonte,* 412 U.S. 218.

It is respectfully submitted that the actions of the police officers in (a) not trying to obtain the identity of the Petitioner before they handcuffed him, (b) not trying to determine before the handcuffing or the search the reason the Petitioner was at the residence, (c) by handcuffing the Petitioner and putting him on the floor, (d) by searching the Petitioner without a search warrant, (f) by

searching the Petitioner's residence without a search warrant, WAS REPREHENSIBLE AND SHOULD NOT BE ALLOWED.

CONCLUSION

WHEREFORE, Petitioner respectfully prays that a writ of certiorari be granted.

DATED: MAY 20, 1996

LAW OFFICES OF
PETER N. PRIAMOS

PETER N. PRIAMOS
Attorney for Petitioner

APPENDIX A

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FIVE

THE PEOPLE, Plaintiff and Respondent, v. DENNIS LEROY HALLGRIMSON, Defendant and Appellant.	)	B091816 (Super. Ct. No. YA019211) (Filed Jan. 8, 1996)

APPEAL from a judgment of the Superior Court of Los Angeles County, William Hollingsworth, Judge. Affirmed.

Peter N. Priamos, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel E. Lungren, Attorney General. George Williamson, Chief Assistant Attorney General, Carol Wendelin Pollack, Senior Assistant Attorney General, Linda C. Johnson, Supervising Deputy Attorney General, and David C. Cook, Deputy Attorney General, for Plaintiff and Respondent.

Defendant and appellant Dennis Leroy Hallgrimson appeals from his conviction of possession for sale of methamphetamine upon a guilty plea following denial of his motion to suppress evidence pursuant to Penal Code section 1538.5. Defendant contends police officers, while

executing a search warrant on a residence, improperly detained and frisked him, a mere visitor to the residence. We affirm.

PROCEDURAL BACKGROUND

By information filed June 2, 1994, defendant was charged with possession for sale of cocaine in violation of Health and Safety Code section 11351, possession for sale of methamphetamine in violation of Health and Safety Code section 11378 and possession of cocaine in violation of Health and Safety Code section 11350, subdivision (a). Defendant entered a plea of not guilty.

Defendant moved, under Penal Code section 1538.5, to suppress the evidence obtained as a result of searches of his person and residence. On November 2, 1994, the motion was heard and denied. Defendant then withdrew his guilty plea to the count of possession for sale of methamphetamine and pleaded guilty. The remaining counts were dismissed in furtherance of justice. Defendant was given a probationary sentence. Defendant filed a timely notice of appeal.

FACTS[1]

On March 29, 1994, approximately ten police officers executed a narcotics search warrant at a residence in the

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[1] The facts are taken from the evidence adduced at the hearing on defendant's suppression motion and from the preliminary hearing transcript, which was introduced into evidence at the suppression hearing.

City of Hawthorne. The warrant encompassed the residence, the person of codefendant Larry Lee Adams and a vehicle.

When the officers approached, the front door was open, but the screen door was closed. They knocked on the door and announced themselves. The officers then heard a commotion from inside the house, which sounded like people running. Fearing that the occupants may have been arming themselves or destroying contraband, the officers entered.

Upon entry, Detective James Royer saw defendant moving from the living room toward the dining room and kitchen area. Detective Royer ordered defendant to lie on the ground and handcuffed him, waiting for the other officers to secure the location. After the location was secured, Detective Royer stood defendant up and conducted a cursory pat-down of defendant, to check for weapons.

In his pat-down of defendant, Detective Royer felt a hard cylindrical object in defendant's front jacket pocket. He had a definite belief that the object contained contraband. He removed the object, a dark brown glass vial with a black top. As he removed it, a baggie, which was in defendant's pocket, came out as well. Both containers appeared to contain cocaine.

Defendant was arrested for possession of cocaine and transported to the police station. Defendant was read his *Miranda*[2] rights, which he waived.

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[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

Defendant told Sergeant James Keith Theriault that he was a drug user and had purchased the cocaine for personal use a few hours prior to his arrest. Sergeant Theriault asked defendant whether he had more drugs at his home. Defendant said he only had a small amount of marijuana at home. Sergeant Theriault asked if the police could search his home. Defendant said, "Sure. No problem. Go right ahead, Nothing to hide." Defendant had read to him and signed a written form consenting to the search of his home. In obtaining his consent, no promises or threats were made to defendant, no weapons were drawn and no voices were raised.

Detective Royer then went to defendant's home. He presented the consent form to defendant's roommate, who let him in the apartment. In defendant's room, Detective Royer found a sifter containing cocaine in a nightstand drawer. He also discovered a safe in the closet. Detective Royer phoned defendant, in custody, and asked him for the combination to the safe. Detective Royer told defendant that if the safe was his, he should reveal the combination, because if he did not do so, the police would force entry into the safe. Defendant said the safe was his and gave the combination to Detective Royer. In the safe, Detective Royer found a rock of methamphetamine, a scale, $2,500 in case, some marijuana, some hashish and various other drug paraphernalia.

Frisk of Defendant

Defendant contends the pat-down search was unconstitutional in that he was a mere visitor at Adams's house and should not have been detained and searched.

State search and seizure claims are resolved under the federal constitutional standard. Evidence discovered in a search should not be excluded unless mandated by the federal constitution. (*In re Tyrell J.* (1994) 8 Cal.4th 68.76.) The Fourth Amendment of the United States Constitution prohibits "unreasonable searches and seizures." In reviewing a claim of an unconstitutional search or seizure, we defer to the trial court's express or implied factual findings when they are supported by substantial evidence. Then, we exercise our independent judgment in determining whether the search was reasonable under the facts as found. (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

"[W]here police officers are called upon to execute a warranted search for narcotics within a private residence they have the lawful right to conduct a limited *Terry*[3] patdown search for weapons upon the occupants present while the search is in progress. Such protective action in the circumstances defined is, in our judgment, manifestly reasonable." (*People v. Thurman* (1989) 209 Cal.App.3d 817, 824.)

Defendant's argument that the frisk was unconstitutional[4] because he was a "mere visitor" thus fails because,

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[3] *Terry v. Ohio* (1968) 392 U.S. 1.

[4] Defendant's implicit argument that the detention was also unconstitutional was waived at the hearing. Counsel specifically conceded the police had a right to detain defendant and argued only that they did not have a right to search him. In any event, "[w]hen, in the course of initiating a search under warrant of a private residence for illegal drugs or related items, police officers encounter on the premises a person whose

as a visitor in a private residence that was subject to a search warrant for drugs, he became subject to a limited pat-down search for weapons.[5] The pat-down search was constitutional.[6]

Search of Defendant's Home

Defendant contends the warrantless search of his home was unconstitutional. A warrantless search is considered per se unreasonable unless it falls within one of the recognized exceptions to the warrant requirement. (*In re Tyrell J., supra,* 8 Cal.4th at p. 76.) "One recognized exception is consent." (*Id.* at p. 79.) The prosecution bears the burden of proving the search falls within the consent exception. (*People v. James* (1977) 19 Cal.3d 99, 106.) The

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identity and connection to the premises are unknown and cannot immediately be determined without detaining the person, the officers may constitutionally detain him or her for the period of time required and in the manner necessary to make those determinations and to protect the safety of all present during the detention." (*People v. Glaser, supra,* 11 Cal.4th at p. 374.)

[5] Defendant's suggestion that because he was handcuffed he presented no risk to the safety of the officers is specious. At some point, the police officers would have been required to release defendant's hands. They were manifestly entitled to guarantee their safety from any concealed weapon before doing so. In addition, even a handcuffed individual may gain access to a weapon.

[6] Because Detective Royer immediately identified the object he felt as a container of contraband, he then had probable cause to arrest defendant and the continued search was justified as a search incident to the arrest. (*People v. Dibb* (1995) 37 Cal.App.4th 832, 835-836.)

prosecution has "the additional burden of proving that the defendant's manifestation of consent was the product of his free will and not a mere submission to an express or implied assertion of authority." (*Ibid.*) The voluntariness of the defendant's consent is a question of fact, to be decided in the first instance by the trial court; we uphold the determination if it is supported by substantial evidence. (*Id.* at p. 107.)

All evidence points to the conclusion the search of defendant's home was consensual. Defendant voluntarily chose to speak with police, and he gave them oral permission to search his home to verify his claim no contraband was to be found except for some marijuana. He then confirmed this consent in writing. There is no evidence suggesting that he was in any way coerced or threatened into consenting to the search. Instead, he gave his consent when asked by the police in the course of an interrogation following defendant's lawful arrest. The trial court's implicit conclusion defendant's consent was voluntary is supported by substantial evidence and will be upheld. Moreover, since we have concluded the original detention and search of defendant were proper, the consent was not the fruit of an illegal detention or search.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

GRIGNON. Acting P.J.

We concur:

ARMSTRONG, J.

GODOY PEREZ, J.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF LOS ANGELES

Date 11-2-94

HONORABLE: Wm. R. Hollingsworth, Jr. JUDGE

C. Castillo Deputy Sheriff

DEPT. SWC

A. Miller Deputy Clerk

J. Smith Reporter

(Parties and counsel checked if present)

CASE NO. YA019211 PEOPLE OF THE STATE OF CALIFORNIA VS CHARGE -02- Hallgrimson, Dennis Leroy 11351-11378 11350	Counsel for People: DEPUTY DISTRICT ATTY: N. Derzaph Counsel for Defendant: P. Priamos,

X _____ (BOX CHECKED IF ORDER APPLICABLE)

NATURE OF PROCEEDINGS Trial & 1538.5 Motion 1-2-94

31 _ _____IS SWORN AS THE ENGLISH/_____ INTERPRETER.

32 _ OATH FILED PER SECTION 68580 GOVERNMENT CODE.

33 _ _ DUE TO CONFLICT OF INTEREST, PUBLIC DEFENDER RELIEVED, PURSUANT TO SECTION 987.2 PENAL CODE/31000 GOVERNMENT CODE ALTERNATE DEFENSE COUNSEL _____ IS APPOINTED.

34 X ON PEOPLE'S MOTION, ~~AMENDMENT TO~~/AMENDED INFORMATION FILED DEEMED FILED/~~INFORMATION AMENDED BY INTERLINEATION~~/AS FOLLOWS show true sir name "Hallgrimson" & office in or 4 occurred 3-30-92 not 93.

_ ARRAIGNED, PLEADS NOT GUILTY, ADMITS/DENIES/ALLEGATION(S).

35 _ _ ON _____ MOTION, CASE A _____ CONSOLIDATED INTO CASE A _____ AS COUNT(S) _____ THEREOF, SEE CASE A _____ FOR FURTHER PROCEEDINGS.

36 _ MOTION PURSUANT TO SECTION 995 PENAL CODE GRANTED/DENIED/WITHDRAWN/CONTINUED TO _____

37 _ _ THE COURT STATES IT HAS READ AND CONSIDERED THE TRANSCRIPT OF THE PRELIMINARY HEARING.

38 X _ MOTION PURSUANT TO SECTION 1538.5 PENAL CODE CALLED FOR HEARING X MOTION SUBMITTED PER STIPULATION 41 BELOW.

39 X _ CAUSE IS CALLED FOR TRIAL.
_ CAUSE SUBMITTED PER STIPULATION 41 BELOW.

40 X DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TRIAL BY JURY _____ COURT ACCEPTS WAIVER(S).

41 X By stipulation of defendant and all counsel issue is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this court's rulings,

with each side reserving the right to offer additional evidence and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that all exhibits received or marked for identification at the preliminary hearing are received in evidence and marked for identification in these proceedings, bearing the same number as used in the preliminary hearing, subject to the court's rulings. People's exhibits 1 & 2 & 3 & 4 ~~(Preliminary Transcripts)~~ admitted into evidence by reference. (2 bags narcotics – Miranda & consent to search form) – attached to this order

42 _ Defendant advised and personally waives his right to confrontation of witnesses for the purpose of further cross-examination, and waived privilege against self-incrimination. Defendant advised of possible effects of plea on any alien/citizenship/probation/parole status.

43 X On the 1538.5 Penal Code Motion Robert Fager, James T. Theriault and James Royer are sworn & testify.

44 _ _ ALL SIDES REST, COUNSEL WAIVE ARGUMENT/ARGUE AND CAUSE IS SUBMITTED.

45 X MOTION PURSUANT TO SECTION 1538.5 PENAL CODE ~~GRANTED/~~DENIED/ ~~WITHDRAWN/CONTINUED)~~ see #39 above.

46 _ _ COURT FINDS DEFENDANT NOT GUILTY

_____

47 _ COURT FINDS DEFENDANT GUILTY AS CHARGED TO SECTION(S) _____

IN COUNTS(S) _____ __ LESSER INCLUDED/RELATED OFFENSE

48 _ _ PRE-TRIAL CONFERENCE/TRIAL SETTING HELD/OFF CALENDAR/CONTINUED TO _____ AT _____ DEPT. _____

49 _ _ THE DEFENDANT
_ THE PEOPLE
ANNOUNCE(S) READY FOR TRIAL

50 _ _ ON PEOPLE'S/DEFENDANT'S/COURT'S MOTION, TRIAL/MOTION(S) IS SET/CONTINUED TO/REMAINS/TRAILED TO _____

AT _____ A.M. IN DEPT. _____ REASON: _____

51 _ _ FURTHER CONTINUANCES WILL NOT BE GRANTED.

52 _ _ DEFENDANT PERSONALLY AND ALL COUNSEL WAIVE TIME FOR TRIAL. PLUS _____ DAYS

53 _ CAUSE TRANSFERRED TO DEPT. _____
_ FORTHWITH _ ON _____ AT _____ A.M.
FOR _____

54 _ _ DEFENDANT/WITNESS(ES) ORDERED TO RETURN ON ABOVE DATE: _____

55 _ DEFENDANT ADVISED OF CONSTITUTIONAL RIGHTS AND EFFECT OF PRIOR CONVICTIONS: WAIVES RIGHTS; ADMITS PRIOR(S) NO _____

56 X DEFENDANT PERSONALLY WITHDRAWS PLEA OF NOT GUILTY TO COUNT(S) 4 REARRAIGNED

57 X _ PLEADS GUILT/~~NOLO CONTENDERE~~, WITH CONSENT OF DISTRICT ATTORNEY AND APPROVAL OF COURT TO VIOLATION OF SECTIONS(~~S~~) 11378 Health & Safety Code IN COUNT(~~S~~) 4 ~~LESSER INCLUDED/ RELATED OFFENSE~~

58 X PROBATION AND SENTENCE HEARING SET 2-2-95 AT 8:30 IN DEPARTMENT SWC INCLUDING X DISPOSITION OF REMAINING COUNT(S) 3 & 5 _ DETERMINATION OF ALLEGATIONS REMAINING

59 X DEFENDANT WAIVES TIME FOR SENTENCE _ REQUESTS IMMEDIATE SENTENCE (SEE BELOW/ATTACHED SHEET)

_ DEFENDANT REFERRED TO PROBATION DEPARTMENT X DEFENDANT WAIVES PROBATION REFERRAL

60 _ FURTHER ORDER AS FOLLOWS: _____

61 _ THE SHERIFF IS ORDERED TO ALLOW THE DEFENDANT _____ TELEPHONE CALLS ILLEGIBLE

Second Appellate District, Division Five, No. B091816
S051583

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE, Respondent

v.

DENNIS LEROY HALLGRIMSON, Appellant

(Filed Mar. 13, 1996)

Appellant's petition for review DENIED.

/s/ Lucas
Chief Justice